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ABSTRACT

Changes in the development of federal legislation affecting the elderly are analyzed in this study, which concentrates on the use of chronological and non-chronological eligibility criteria. Data for this research are contained in a computerized annotated index of federal legislation impacting on older Americans. The index covers seven major areas of federal legislation: social services, income maintenance, housing, consumer affairs, health care, employment, and taxation. For this preliminary analysis, specific attention is given to the areas of housing, nutrition, and health care programs designed to serve older persons. Also discussed is the increased use over time of functional (i.e., non-chronological) definitions as modifiers of chronological eligibility criteria. The question of the extent to which chronological definitions are adequate as categorical identifiers of those in need persists. The study suggests changes which should be made to reduce the inequities and inconsistencies which persist in federal legislation oriented toward older Americans, many of which seem to have evolved specifically because of the lack of a strong, cohesive age-based lobby at the federal level. (Author)

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INTEREST GROUPS AND THE DEVELOPMENT OF FEDERAL LEGISLATION AFFECTING OLDER AMERICANS

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ABSTRACT

Changes in the development of federal legislation affecting the elderly are analyzed in this study, which concentrates on the use of chronological and non-chronological eligibility criteria. Data for this research are contained in a computerized annotated index of federal legislation impacting on older Americans. The index is structured to highlight various substantive groupings of programs and legislation, stressing the types of eligibility criteria used to define the elderly. Changes in these criteria over time are documented and related, in part, to the slowly growing influence of aged-based interest groups and advocate organizations on federal legislation since 1950. The annotated index covers seven major areas of federal legislation; social services, income maintenance, housing, consumer affairs, health care, employment, and taxation.

For this preliminary analysis, specific attention is given to the areas of housing, nutrition, and health care programs designed to serve older persons. This paper represents a summary of more detailed research reports concerning the evolution of each of these three areas of public policy as they affect the elderly. Significant inconsistencies are found among these federal programs in their use of chronological and non-chronological eligibility criteria. Also discussed is the increased use over time of functional (i.e., non-chronological) definitions as modifiers of chronological criteria. The question of the extent to which chronological definitions are adequate as categorical identifiers of those in need persists.

Similarly, the role of age-based interest groups and advocate organizations as influential factors in the development of federal legislation impacting on the elderly remains questionable. Our discussion includes an assessment of their impact on these program changes as contrasted with the role played by other interest groups which are not age-based. The study suggests changes which should be made to reduce the inequities and inconsistencies which persist in federal legislation oriented toward older Americans, many of which seem to have evolved specifically because of the lack of a strong, cohesive age-based lobby at the federal level.

Introduction

The development of federal legislation impacting on the elderly has been studied in a number of ways, sometimes with conflicting conclusions. A central question posed in most analyses has been the role of various interest groups in promoting or thwarting such legislation, particularly those groups which have evolved as advocate organizations for the elderly as opposed to those which do not have such a constituency. This paper traces the evolution of federal legislation impacting on the elderly in three substantive areas: housing, health care, and nutrition. At the same time it documents the variations in how chronological and non-chronological definitions have been used to define the elderly as a categorically needy group.

This paper represents a brief overview of findings contained in larger research reports which analyze the evolution of federal programs in these three areas of public policy impacting on older Americans. The legislative data on which these studies are based are contained in an annotated index of federal legislation impacting on the elderly (Harootyan, 1977). In addition, congressional hearings and other sources of information were used to document the relative influence of major actors on the enactment of the pertinent statutes and the changes which ensued. The detailed analyses on which this summary is based use conceptual approaches such as the rational actor model, the organizational process model, the bureaucratic politics model, and the interest group lobbying model set forth by various researchers (Allison, 1968; Binstock, 1972; Marmor, 1973; Pratt, 1974; Sundquist, 1968).

From these investigations has evolved our assessment of the political processes leading to the use of both chronological and non-chronological eligibility criteria in programs oriented toward the elderly. Inconsistencies

and possible inequities arising from these types of eligibility criteria are pointed out, while at the same time suggestions are made for their existence. Finally, we discuss possible ways in which these inconsistencies can at least be reduced, including the potential influence of a stronger and more cohesive age-based lobby at the federal level.

An Awakening to the Plight of the Elderly

Trends in the nation's consciousness concerning public policy foreshadowed federal involvement in attempting to meet the needs of older Americans as a group. Contemporary economics revealed the dilemma faced by older persons on fixed incomes during periods of rapid inflation. Demographic analyses taught that the advances of improved public health and modern medicine would produce in this country an elderly population of over 22 million by 1977. Political science and political sociology showed that existent government programs were incapable of adequately dealing with the problems of health care, housing, and nutrition which were being experienced by large proportions of the elderly. Statistics were readily available to support and justify programs which promised to make inroads into the nightmarish existence which many older Americans were facing.

The development of a compelling statistical profile of the elderly has often preceded the enactment of federal legislation on their behalf. For example, the Medicare debates which continued for over a decade through the 1950's expanded congressional awareness not just of health care and income maintenance problems faced by most older persons. At the same time Congress was made more aware of a confluence of factors, including "...low-income, failing health, bad housing, lack of employment and recreational opportunities, withdrawal from family and community life, and higher incidence of mental illness" among older Americans (Sundquist, 1968, p. 294).

The statistical profiles of the older population uniformly supported the popular conception of the aged American as sicker, poorer, and less insured than his or her younger compatriots. Health surveys reported and continue to indicate that persons age 65 and over are more than twice as likely as those under age 65 to be chronically ill and to be hospitalized twice as long (Marmor, 1973, p. 28). With this type of armor the easiest part of the struggle to marshall support for and to secure needed medical benefits was to establish that the need existed among a noticeable categorical group; namely, older people.

Yet a tension inevitably exists in federal programs aimed at meeting the needs of the elderly or any other similarly defined segment of the population. The tension is between relieving and meeting that need while also rewarding the undeserving in that population. Traditionally, the problem has been dealt with in one of two ways. Either programs were designed to resemble insurance plans (e.g., Social Security and Medicare) or efforts were made to restrict benefits to what might be called the "faultlessly poor."

The elderly, as a group, have a compelling case for being included among the faultlessly poor.

> [The elderly] were one of the few population groupings about whom one could not say the members should take care of their financial-medical problems by earning and saving more money. The American social security system makes unemployment a condition for the receipt of pensions, and a fixed retirement age is widely accepted as a desirable public policy... Only the most contorted reasoning could blame the aged for this condition by attributing their insurance status to improvidence.
>
> (Marmor, 1973, p. 16)

Legislation disguised to relieve burdens of the faultlessly poor frequently covers three groups: the physically or mentally handicapped, the displaced, and the chronologically-defined elderly (Harootyan, 1977). The

first two groups--the handicapped and the displaced--are defined functionally; that is, by individual empirical evidence. Proscribed physical or environmental characteristics are prerequisites for inclusion within either of these categorical groups. Chronological age, however, serves only as a statistical approximation of physical or environmental attributes of an entire group of individuals. Those persons below or above a certain age are presumed to be in some way handicapped by their age or to be environmentally disadvantaged.

Our review of available data, as noted briefly in the previous section, shows that such statistical presumptions do correlate well with old-age group need. But the problem of inappropriate determinations in individual cases, which functional criteria avoid, persists when chronological age is used. Many persons who do not meet chronological age requirements have strong claims for being included among the faultlessly poor. Conversely, some persons receiving benefits meant for the disabled are functionally fit. In short, chronological age criteria tend to undermine the ideal goal of providing aid only to the faultlessly poor, to those truly in need.

Legislative Use of Chronological Definitions

Although age-based statistics are pervasive, especially those related to all persons age 65 and over, there are other reasons why legislators think about age solely in chronological terms. The primary reason which emerges from our review of the data is, quite simply, tradition. Age has long been viewed in terms of years since birth. Indeed, most people would have great difficulty expressing their age in any other way. Over time this reliance on chronological age criteria becomes self-perpetuating.

For example, the Social Security system works in a number of ways to induce people to retire when they reach a certain chronological age. The private sector reinforces the effect of the Social Security system with pension and mandatory retirement schemes based on the same criterion. The cessation of earned income marks the onset of myriad needs for most older people. And since these needs arise with chronological age, it makes sense that benefits designed to deal with those needs be allocated according to chronological eligibility criteria. The design of program A determines the design of program B, and the process--like a self-fulfilling prophecy--continually reinforces itself.

Sometimes federal legislation not only identifies needs, but it may also define a categorical group. The Social Security system again serves as an example. The system creates (and thereby defines) a group of persons which participates in a modified type of government insurance or cash transfer program. When other benefits such as health care were later offered, this insured group was a natural beneficiary. Similarly, the nutrition program under Title VII of the Older Americans Act defines a group of nutritionally and socially needy persons primarily on the basis of chronological age alone (i.e., 60 years old or over).

It is also clear from other Titles under the Older Americans Act that functional criteria, if they exist, have evolved only as secondary modifiers of chronological eligibility definitions. The process of incorporating previous definitions into new legislation allows chronological criteria to be adopted without the scrutiny that such criteria would otherwise be likely to receive had no prior definitions existed.

Chronological age is admittedly a categorical approximation of need and it has been traditionally used since the inception of the Social Security

system in 1935. Indeed, a lexicon of elderly groups and gerontological issues has evolved over time, largely grounded on the use of chronological age definitions. To this list of factors must be added the fact that chronological age criteria are inexpensive and bureaucratically simple to use. An extensive birth recording system has produced a society in which age determinations are easily made, administrative expenses are minimized, and funds available for actual benefits to those age-categorized groups are maximized.

Alternatively, functional determinations are likely to be involved, costly, and sometimes ambiguous. Highly trained persons would be required to make eligibility determinations based on non-chronological criteria. Just as assuredly, other highly trained persons would question many of their conclusions. It appears from the complexity of using functional criteria that the financial impact of implementing alternative definitions of age would probably be great.

Chronological Age and Political Group Consciousness

Some researchers have posited that until recently the elderly as a political force have been weak. This political impotence has been equated with their lack of group consciousness (Binstock, 1974). Focusing on the needs of the elderly is a relatively recent political development for both the federal government and the elderly themselves (Pratt, 1976). Old-age group identity is a relatively recent phenomenon, one which sometimes holds negative meanings for individuals immersed in a society obsessed with youth.

One of the greatest obstacles to formation of a group consciousness, especially a politically homogeneous one, is that elderly persons are subject to many competing identities and allegiances (Binstock, 1974). The older

population is economically, socially, and politically heterogeneous. Moreover, the functional aspects of aging do not neatly coincide with the calendar, and chronological age has not been a strong unifying factor in American politics. If we use the analogy of the elderly as Christians, then those with whom they have shared the political arenas over the years are easily seen to be the lions.

In seeking health care benefits the elderly were opposed by the American Medical Association and the united lobbying efforts of the several health care industries. Even the American Legion was lined up in opposition to the Medicare proposals of the 1950's (Marmor, 1973, p. 24). But as has been well documented, the efforts of fragmented groups of older persons to institute some form of federally subsidized health care were greatly aided by a previous movement among the more liberal labor unions to establish the federal disability insurance program.

It was the AFL-CIO that was attracted to the disability insurance program and which formed a formidable force for its passage. The program promised benefits which today's working union member could realize tomorrow, should he become disabled. Disability insurance became a fact in 1956, not only because of the efforts of the AFL-CIO but also because the program's characteristics avoided some of the features opposed by the strong conservative forces in Congress. In particular, the eligibility criteria were based on functional definitions which were easily applied to individuals and not to broadly defined groups. In other words, it avoided the danger of providing benefits to the undeserving along with the deserving poor.

Moreover, disability insurance was structured to avoid resembling socialized medicine or interfering with private medical practice by providing cash

payments directly to beneficiaries. Finally, if anyone had a better claim than the elderly to the title of deserving poor it was the disabled worker. It was this type of public exposure that brought forth further efforts of major labor organizations and their allies to develop other federal benefit programs for groups which could not easily be defined as undeserving or denied to be faultlessly poor.

The thrust of these efforts was to supplement union and company benefits which were available to workers. Sundquist posits that health care was the logical next step after disability insurance was enacted (1968, p. 296). By dealing with the needs of one group of medically needy persons, the disability program allowed the remaining group of medically needy to be more clearly defined; namely, the elderly.

Officials in both the Federal Security Agency and in organized labor had by the mid-1950's decided to make the elderly the focus of the national health care struggle, realizing that any proposals to cover a wider population base would be politically impossible to enact. Marmor suggests that designing proposals for the elderly was viewed as a method of consensus building by the Federal Security Agency (1973, p. 14). Thus, the interests of the two strongest proponents of national health care had been joined, centered on a politically expedient subgroup of the population which few legislators could easily or strongly object to as undeserving of health care assistance.

The task of building a political coalition remained, but by 1961 the AFL-CIO had been joined in battle for Medicare passage by the American Nurses Association, the Council of Jewish Federations and Welfare Funds, the American Association of Retired Workers, the National Association of Social Workers, the National Farmers Union, the Socialist Party, and the American Geriatrics

Society (Marmor, 1973, p. 24). This coalition, which for the first time included age-based advocate organizations, added legitimacy to the struggle and made national health care more than just a labor union initiative.

Yet one final legitimizing element remained to be found--representation by an age-based group which spoke for a large segment of the elderly themselves. Capitalizing on the grass roots appeal of the health care initiative, the AFL-CIO fostered the establishment of the National Council of Senior Citizens (NCSC). The NCSC grew out of the Senior Citizens for Kennedy organization, which had been formed to assist in the 1960 Kennedy presidential election bid.

The coalition was complete and support steadily grew behind its efforts, making passage of a health care measure tied to the Social Security system inevitable. Marmor called the politics of the period the "politics of legislative certainty" (1973, p. 59). But the program which was designed was intentionally linked to the existent Social Security system in order to maintain the image that it was not a precursor to national health care or socialized medicine for all segments of the population.

Thus, the use of chronological definitions of age persisted and was fostered under the umbrella of safety provided by an established, well received program that was not seen as suspicious. The Medicare program that was finally established was a far cry from the initial visions of Truman era advocates for universal national health care. But by selecting a chronologically-defined population subgroup which had the strongest support as faultlessly poor and most deserving, these advocates were able to at least establish some form of national health care.

This example of the evolution of the Medicare program sets forth a clearer understanding of the role of age-based advocate groups in generating

legislation impacting on older persons. Quite clearly, the evolution of Medicare did not originally arise from a national thrust on behalf of the elderly, nor from an age-based group of advocate organizations. Medicare was a compromise, a substitute for a much broader national health care program envisioned by the Truman era proponents. But the elderly were the surest route to passage of some form of federally subsidized health care. Indeed, the evolution of the NCSC out of the push for Medicare was indicative of the lack of any strong coalition of the older population in national politics through the early 1960's. Moreover, the lack of active support of the National Retired Teachers Association-American Association of Retired Persons (NRTA-AARP) for the Medicare program was indicative of the fragmentation among the few large age-based interest groups that did exist in the early 1960's (Pratt, 1976, p. 91).

Clearly, not until the latter half of the 1960's did such interest groups begin to show stronger efforts to lobby for similar programs benefitting the elderly at the federal level. Their record, however, remains unimpressive when compared with the influence and political activity of non-age-based interest groups. Differences among the largest aged advocate organizations persist in terms of their memberships' characteristics and the constituencies they represent.

The two other policy areas of concern in this paper also provide examples of the relative ineffectiveness of age-based interest groups in promoting and affecting federal legislation, especially when contrasted with the efforts of other types of advocate groups and agencies in those same areas of policy. The following sections will briefly highlight some of the characteristics of federal housing and nutrition programs impacting on the elderly and indicate the poor record of direct involvement by aged interest groups in their development.

The most obvious area of federal legislation which has gone largely unaffected by any form of advocacy by the elderly is housing and the variety of federal housing assistance programs. Not until recently was there any federal policy or program which directly recognized the elderly as a special category of persons with particular housing needs. The array of programs, which taken collectively might be called a federal housing program, is readily seen to be a patchwork quilt. The quilt is comprised of various types of housing, a variety of direct and indirect subsidies, and a fickleness in the amount and duration of appropriated funds for existent programs.

Traditionally, the lowered voices of elderly interest groups with respect to housing legislation has fared poorly in comparison with the echoes of the private housing construction industry and the financial institutions. Elderly interest groups, as presently constituted, cannot be expected to counterbalance the influence of the housing industry. In the first place, public housing is generally viewed as a welfare or give-away program. Such issues have been largely avoided by national age-based advocate groups (Binstock, 1972, p. 265).

These aged interest groups are not by and large comprised of the poorest of the elderly, nor do the members identify with the interests of the very poor among the aged. Neither do they identify strongly with the non-chronologically aged, since retirement is often a general pre-condition for membership. At best, interest group members only tangentially support housing legislation designed to assist the poorest elderly. Finally, even if the interest existed it is unlikely that effective opposition to the interests of the building industry could be created. Indeed, various parts of federal housing legislation state as part of their congressional objectives the spurring and support of the construction industry (Harootyan, 1977).

Because the building industry is a relatively small group of well-defined members with specific goals, fragmentation of interests and of lobbying efforts at the federal level are practically non-existent. Such is not the case among the different age-based advocate organizations that do exist. Quite simply, the personal returns of housing legislation for industry representatives are great and their strong identification with the industry's goals fosters a cohesive lobbying effort. The federal lobbying efforts and victories of the elderly, when confronted by such an organized opposition, have been few.

Examples of the influence of the building industry are found in the relative lack of success of most public housing leasing programs, which did not foster capital intensive building construction. Moreover, until recently no programs designed to house the elderly specifically called for the provision of social services and other facilities which are often necessary to provide an adequate housing environment for older persons. Not until the White House Conference on Aging in 1971 was a specific recommendation made in this regard. And only recently has the Section 202 program been earmarked for concentrated effort to provide increased numbers of housing units for the elderly, in coordination with social service components called for in the more recent amendments to the Older Americans Act of 1965.

A similar lack of direct input or influence has been evident in most federal nutrition programs. Neither the food commodities program nor the food stamp coupon program was designed to meet any of the special needs of older, poor people. Not until 1969, and largely in conjunction with the mandates of Title IV of the Older Americans Act, were these programs in any way responsive to any issues other than increasing the food purchasing

power of the poor. In this sense, the commodities and food stamp programs were primarily designed to support the agriculture industry, as evidenced in part by their auspice under the Department of Agriculture rather than the Department of Health, Education, and Welfare.

It was clearly the passage of the Older Americans Act that led the way for advocates of the aged poor to influence nutrition legislation. The Title IV pilot programs set the stage for public evaluation of the benefits provided by the nutrition program, which went beyond the issue of purchasing power. The glowing reports of successes under Title IV foreshadowed the 1969 amendments to the Food Stamp Act, which added a "meals on wheels" program for the elderly. A concerted federal effort was finally evident to provide meals for the elderly rather than just food purchasing power. This emphasis was solidified with the passage of the 1972 amendments to the Older Americans Act, which established the more permanent nutrition program for the elderly and in 1973 called for the incorporation of the program into comprehensive services amendments.

It appears that the influence of aged interest groups was felt not directly but rather through changes in the Older Americans Act over time. A large share of this influence, as indicated by testimony in congressional hearings, was not from age-based advocate organizations. Rather, the thrust of the testimony came from the service providers themselves.

Emerging General Patterns in Legislation

A pattern emerges from the legislation which has been examined. Chronological ages are selected at the outset for many of the reasons cited in the first parts of this paper. Changes seldom occur either in the age selected or in the chronological nature of the criteria used, despite regular amendments to major legislation affecting the elderly.

If legislative program changes do not significantly affect who is to be served, then whom do they affect? The Medicare amendments over the past ten years have tightened payment procedures and have introduced quality controls on health care providers. The housing moratorium mandated by President Nixon in 1973 was triggered by construction industry abuses in the Section 235 and 236 programs. Recent testimony concerning the Title VII nutrition program centered not around who was being served but on how the meal providers would meet rising costs.

Program changes have affected health care providers, housing builders, and Title VII program administrators: actors who operate between the federal government and program beneficiaries. These middlemen have benefitted from the changes in the programs considered, while at the same time having been strong lobbyists for those program changes. The elderly, on the other hand, have seldom been an independent force prompting government action once programs have been established.

Yet the elderly can and do play a part in the legislative process. Marmor sees the elderly purging the Medicare appeal of the taint of self-interest which the AFL-CIO had imparted.

> .....it was far more difficult for the AMA to engage in open warfare with [elderly pressure groups] than it had been for the doctors to do battle with the AFL-CIO. When the critics of governmental Medicare proposals seized on broad ideological objectives, they now had also to take into account the possibility of being labelled the enemy of America's senior citizens.
>
> (Marmor, 1973, p. 28)

The elderly were also enlisted in the attack on President Nixon's housing program moratorium. While the topic of Senate hearings held in 1974 was the "Adequacy of the Federal Response to the Housing Needs of Older Americans", the specific issue was the 1973 moratorium. The infusion of the housing

needs of the nation is also evident in the Housing and Community Development Act of 1974. Reluctance to terminate the meals programs which were started under Title IV of the OAA undoubtedly eased passage of Title VII.

The role of the elderly and age-based interest groups in all these cases is that of a moral make-weight. Once the interests of the elderly are clearly linked to a legislative proposal, it becomes extremely difficult to call up broad moral propositions in opposition to those interests. Of course, make-weights are not independently decisive elements in the legislative process. The sweeping national Democratic victory of 1964 was needed to assure the passage of Medicare, and a change in national attitudes as well as a change in national leadership were required to overcome the housing moratorium.

But the moral appeal of the elderly was not inconsequential. Other actors in the legislative development process, such as the labor unions and the construction industries, can be expected to enlist that moral appeal where it supports their cause. The danger here lies in the voice of the aged and their interest groups being co-opted during that process.

Various ways of avoiding being co-opted have been outlined by others. Binstock suggests new alliances which join together functionally aged persons with the physically handicapped and racial minorities (1972, p. 265). Lowi, focusing on the administrative level, sees the problem as a misuse of power at the lower levels of government. He calls for a return to the period when all delegations of power to administrative agencies were accompanied by clear standards of implementation (Lowi, 1969, passim). In this way Lowi feels that interests recognized by Congress will not be bargained away in front of bureaucracies.

For the time being, it appears to us that the most promising approach to the development and maintenance of influence by the elderly for the elderly is to write narrower federal legislation. Programs like the Older Americans Act and Section 202 Housing for the Elderly limit the involvement of middlemen while assuring that elderly interest groups and advocate organizations will be consulted during discussions concerning such programs.

While providing services, these types of programs can also indoctrinate age-based groups and older people in general about the legislative process. Through these groups the older population may construct a more truly effective lobbying capacity, although differences in degree of effort will continue to exist so long as the major aged interest groups are comprised of noticeably different constituencies.

Finally, there is one other element which must be considered in future attempts to promote greater influence and effectiveness of older people in the legislative arena. The problem with the role of the moral make-weight is that not all plays call for the part. The actor playing the make-weight is not a well rounded character. The problem of fragmentation, which permeates elderly interest groups and organizations as well as programs for the elderly, was recognized over 5 years ago in the halls of Washington (Senate Special Committee on Aging, 1971).

Fragmentation arises in part from a lack of effective self-representation, a lack of unity concerning group goals, a lack of group identity and political consciousness, and the reactive nature of many bills impacting on older persons. Moreover, fragmentation is facilitated by inconsistent and often inequitable chronological definitions of age. The integration of categorical assistance programs for the elderly can be frustrated by the maintenance of inconsistent chronological age definitions and eligibility criteria.

The enactment of the Older Americans Act of 1965 was in part intended to deal with the problem of fragmentation. But so long as chronologically based definitions are allowed to persist, much less differences in those definitions among various programs, then fragmentation of services as well as of interest groups among the elderly will remain.

Meaningful reform must aim at dealing with the needs of the elderly regardless of age. It seems advisable to us that we move away from the dictatorship of the birth certificate and more toward a system of government assistance which actually helps people deal with the deprivations of the aging process. It is a movement away from chronological age definitions, combined with increased group level consciousness based on functional criteria, which could greatly aid in this effort.

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